

82-1237  
IN THE

Office - Supreme Court, U.S.

FILED

JAN 24 1983

SUPREME COURT OF THE UNITED STATES

ALEXANDER L. STEVAS.

CLERK

OCTOBER TERM 1982

No. \_\_\_\_\_

---

CARMELA M. STELLA, M.D.

APPELLANT

v.

MERCY HOSPITAL, PORT HURON,

MICHIGAN, et all

APPELLEES

---

ON APPEAL FROM THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT.

---

CARMELA STELLA, MD  
IN PROPRIA PERSONA  
2586 Aberdeen Ave.  
Los Angeles, Ca. 90027  
(213) 462-7329

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 1982

No. \_\_\_\_\_

---

---

CARMELA M. STELLA, M.D.

APPELLANT

v.

MERCY HOSPITAL, PORT HURON,  
MICHIGAN, et all

APPELLEES

---

---

ON APPEAL FROM THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT.

---

---

CARMELA STELLA, MD  
IN PROPRIA PERSONA  
2586 Aberdeen Ave.  
Los Angeles, Ca. 90027  
(213) 462-7329

## QUESTIONS PRESENTED FOR REVIEW

1. - Whether 28 USC section 2415 (c) is applicable to the present action: "Actions to establish right of possession of property have no bar." And whether a statute which limits the protection of a constitutional right, - the right to property, - is unconstitutional. (Referring to 15 USC section 15b.)

2. - Whether Appellees may knowingly conceal evidence which disproves the legitimacy of their business and medical reasons, - and thereafter claim such legitimacy.

3. - Whether violations of the fifth, sixth and seventh amendment of the constitution , and violation of CCP 581 have occurred in the course of the proceedings involving this action.

4. - Whether a statute of limitation  
can be properly applied to the  
prosecution of a felony. (1974 Amendment  
of the Sherman Act.)

## TABLE OF CONTENTS

	<u>PAGE</u>
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	111
OPINIONS BELOW	2
JURISDICTION	2
STATUTES AND REGULATIONS INVOLVED	3
FACTS MATERIAL TO THE CONSIDERA- TION OF THE QUESTIONS PRESENTED	9
ARGUMENT	22
CONCLUSION	28
Appendix-A	Opinion of the US. Court of Appeals for the Sixth Circuit. A-1
Appendix-B	Opinion of the US. District Court, Eastern District of Michigan, Southern Division A-11

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Cantor v. Detroit Edison Co.</u> 428 US.579 (1976)	21
<u>Ohio ex. rel. Seney v. Swift &amp; Co.</u> (1921 CA6, Ohio) 270 F. 141, Cert. den. 257 US 633, 66 S. Ct.22, 1 Ohio L Abs 36).	6
<u>Klor's v. Broadway-Hales Stores,</u> 359 US 207	26
<u>Parker v. Brown</u> 317 US 341 (1943)	20
<u>Robinson v. McGovern</u> 521 F. Supp. 842 (W.D.Pa.1981) affd 3rd Circuit, Slip Opinion # 81-2726, 5-11-82.	20
<u>United States v. National Society of Professional Engineers</u> 435 US 679 (1976) 98 S.Ct.1355.	27

**FEDERAL STATUTES****Page**

15 USC section 1 and 2	8
15 USC section 15b	4, 23
15 USCS section 45 (b), Federal Trade Commission Act, 38 Stat. 719 section 5, as amended.	A-
28 USC section 2415 (c)	4, 5, 24
28 USC section 2403 section (a)	8
28 USC section 1254 (1)	8
42 USC section 1983	4, 24
CCP 581	17

IN THE  
SUPREME COURT OF THE UNITED STATES

---

CARMELA M. STELLA, M.D.

Appellant

vs.

MERCY HOSPITAL, PORT HURON,  
MICHIGAN, a Corporation Assumed  
Name for the Sisters of MERCY  
HEALTH CORPORATION, a Michigan  
nonprofit corporation, RONALD  
BALBOA, M.D. JOHN H. MILLER,  
M.D., JOHN C. SULLIVAN, M.D.,  
JOSEPH A. BARRS, M.D., JAMES G.  
WOLTER, M.D., JAMES W. COPPINGS,  
M.D., JAMES J. SNIDER, M.D.,  
JOHN A. YOUNGS, M.D., GORDON H.  
WEBB, M.D., SISTER MADELINE SAGE,  
MICHAEL SCHWARTZ, SISTER MARIAN  
MERTZ, SISTER MARY PATRICE SINNOT,  
jointly and severally,

Appellees.

---

The Appellant , Carmela Stella,  
hereby appeals from the final judgement  
of the Sixth Circuit Court of Appeals,  
entered in these proceedings on November  
24, 1982. (Petition for Rehearing).

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears in the Appendix at page A-1.

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division, appears in the Appendix at page A-11.

### JURISDICTION

The Appellant invokes this Court jurisdiction pursuant to 28 USC section 2403 (a), and 28 USC section 1254 (1).

A question on the constitutionality of a Statute was raised by the Appellant CARMELA STELLA, M.D., in a Request for a Hearing en Banc, filed with the Sixth Circuit Court of Appeals on June 25, 1982.

Certification of the above question to the Attorney General, - in compliance with Rule 44 of appellate procedures, - was requested from the Clerk of the

same Court with letter dated September 14, 1982.

No answer either upholding or denying the constitutionality of the Statute was given by the Court of Appeals; - nor has any opinion of the Attorney General been brought forth on the question raised.

The Court of Appeals for the Sixth Circuit has also failed to solve the contradiction existing between two statutes both applicable to the present case.

STATUTES AND REGULATIONS INVOLVED

28 USC, section 2415 (c)

15 USCS, section 15b.

42 USC section 1983

CCP 581

15 USCS section 45 (b) Federal Trade Commission Act, 38 Stat. 719, section 5 as amended.

This action has been presented in Court in defense of a property right : - 28 USC section 2415 (c) - specifically states that actions to establish title or right of possession of property have no bar : - "Nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of property."

Such statute is in contradiction with 15 USCS section 15b, a statute of limitation applied to the Antitrust Act.

The Court of Appeals has dismissed our actions against three of the Hospitals sought to be joined as defendants for "conspiracy to restrain trade", - on the base of the above statute of limitation.

42 USC section 1983 clearly states: -  
" Every person who, - under colour of any statute, causes any citizen to be subjected to the deprivation of any rights secured by the Constitution ( in this case a property right ) shall be liable for redress to the party injured in an

action at law , suit in equity, or other proper proceeding."

We submit to this Court that a statute that limits the protection of a constitutional right, - a right to property, - is unconstitutional.

We also submit that a statute of limitation cannot be properly applied to the prosecution of a felony : By a 1974 Amendment, Congress has declared a violation of the Sherman Act to be no longer a misdemeanor, but a "felony".

---

We are invoking the jurisdiction of this Court under 28 USC section 1254 (1), - to review criminal conduct by the Attorney General of the State of Michigan : The aiding and abetting "knowing concealment" of evidence in this case.

"Knowing concealment" of evidence in the course of a court proceeding is a "fraud" and a "felony".

A State officer, guilty of criminal behaviour in the performance of a public duty, - neither represent the State, nor enjoys of its sovereign immunity. (Ohio ex. rel. Seney v. Swift & Co. (1921 CA6 Ohio) 270 F. 141, Cert. den. 257 US 633, 66 S. Ct 22, 1 Ohio L Abs 36)

Also under 28 USC section 1254 (1) we request review of refusal by District Court Judge to enforce Appellant's subpoenas to obtain discovery, - forcing Dr. STELLA to have recourse to a Freedom of Information and Privacy Act request to obtain the needed discovery.

Review is also requested of the dismissal of this suit by summary judgement, - prior to jury trial , in violation of the seventh amendment of the Constitution which protects a citizen's "inviolable" right to jury trial.

Summary judgement cannot be granted where matters of statute are not involved, -

without allowing the evidence to be presen-

ed to a jury.

Review is requested of the refusal of a State Agency, - the Michigan Department of Licensing and Regulation , to honour a request made under the Freedom of Information and Privacy Act for disclosure of "evidence and witnesses". Such refusal violates the sixth amendment of the Constitution .

"Any information used to deny an individual any rights, privileges or benefits to which he is entitled under Federal Law, - shall be provided and is not exempt from disclosure pursuant to 5 USC 552 a (k) (2). Code of Federal Regulations, 28 section 16, 42 (2) revised November 1, 1981.

Review is finally requested of refusal by the Sixth Circuit Court of Appeals to enforce discovery : - Abetting "knowing concealment of evidence", fundamental to the decision of a case , - is a violation of due process. Refusal of evidence and witnesses violates the sixth amendment of

Constitution.

We are aware that in the tradition of the United States Supreme Court, an Appeal is granted under either section 2403 (a), for review of a constitutional question, - or under section 1254 (1) , for review of the merits of the case.

For compelling reasons of Justice in this case, - we are requesting review under both sections 2403 (a) and 1254 (1).

#### STATEMENT OF THE CASE

The present action was brought to Court by DR. STELLA, appellant in this case, - on a complaint of "conspiracy to restrain trade" in violation of section 1 and 2 of 15 USC, - otherwise known as the Sherman Antitrust Act.

The complaint was brought against Mercy Hospital, Port Huron, Michigan and all the Appellees named in this action.

After years of delays due to enormous political pressures applied upon DR. STELLA's attorneys, - the case was first presented on November 14, 1978 to the St. Clair Circuit Court for the State of Michigan, and subsequently moved on January 23, 1980 to the Federal Court.

Legal defense was refused by a dozen of attorneys because of the estimated amount of time and money the suit would require; and because the suit was considered a "politically inconvenient" , "uphill fight against the establishment". (quote)

Dr. Stella has assumed the defense "in propria persona".

#### FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

Carmela Stella, M.D., is a woman physician, and only one of two women physicians who had staff privileges both at St. Joseph's Hospital in Mt. Clemens and Mercy Hospital, Port Huron, Michigan.

A vicious controversy arose in both hospitals concerning referral of surgical patients, and transferral to the University Hospital of surgical cases who had been mishandled by local surgeons. A group of surgeons in those hospitals claiming the right to "force" referrals to less qualified surgeons, by general practitioners; - and the hospital claiming the right to obstruct transferral to a University Hospital, if such transferral posed a risk of malpractice liabilities to the hospital.

When Dr. Stella refused to give in to pressures and threats of retaliation, - ( "I will show her who I am." - Peter Kane, M.D., Chief of Surgery at St. Joseph's Hospital ) - Dr. Stella's staff privileges were curtailed.

An utter disregard for both substantive and procedural due process has been shown all along in the proceedings involving this action, - the Defense advancing even the preposterous claim, that "due process"

does not apply in Court, to antitrust actions.

Dr. Stella's privileges were first curtailed by St. Joseph Hospital in December 1971, the "official reason" given for such curtailment "non-attendance" to medical meetings : - Bylaws of the Hospital did not require but only encouraged attendance to such meeting, by the interdepartmental staff to which Dr. Stella belonged. Dr. Stella had in truth attended such meetings, but had not signed in her attendance on flying pieces of paper , because nobody had advised her of such requirement.

The curtailment of staff privileges was done without any previous notice or hearing: Threethousands eight hundred patients of Dr. Stella (3,800 patients), five hundreds of which were Medicare and Medicaid patients, - were denied access by the four local hospitals in concert , for a period of an entire year. This was done in the middle of a most severe epidemic of influenza: - A large number

of elderly patients with heart disease, viral pneumonias and other respiratory illnesses were refused admission, forcing Dr. Stella to treat them at home, using her office nurses as visiting nurses. The refusal extended even to a patient with severe internal bleeding.

Dr. Stella applied for privileges to the three other hospitals in the area: Port Huron General Hospital , Mercy Hospital in Port Huron and River District Hospital in St. Clair.

Port Huron General Hospital and River District Hospital denied both staff privileges, giving as the "official reason" the distance from the hospital ( 14 miles) - : Such reason has been ruled as unreasonable and illegal by the Courts.

Mercy Hospital, under threat to be joined in a law suit granted Dr. Stella staff privileges, but let the controversy continue:

Dr. Stella was denied by the consultant surgeons the privilege to scrub on her own cases. When several cases were mishandled by less competent surgeons, both at St Joseph Hospital and at Mercy Hospital in Port Huron and Dr. Stella transferred the patients to the University Hospital, the hospital interfered blocking such transferral, - with total disregard for the patient's life.

At this stage again Dr. Stella's privileges were suddenly curtailed without previous notice or hearing on March 10, 1976.

Before an appeal hearing had even been granted and one full year before the decision had been finalized by the Governing Board, the Hospital administrator initiated proceedings in administrative court to revoke Dr. Stella's license.

At the hearing in front of the Peer Review Committee, all members of the Committee swore under oath at the opening of the hearing and before any evidence had

been submitted, that Dr. Stella was guilty.

What good does to a person to present the evidence to a Judge who has sworn under oath you are guilty at the opening of the trial, - is a question that neither the District Court Judge, nor the Appeal Court's Judges have cared to answer.

Incredible as it may seem, - four Judges have agreed on the opinion that, - as long as you are granted the right "to speak" in front of a judge, - it doesn't matter at all if the Judge has declared you guilty at the opening of the trial.

Allegations of malpractice on the part of Dr. Stella, were given as the "official reason" for curtailment of staff privileges at Mercy Hospital.

Unfortunately for the Hospital the Administrative Court initiated immediately proceedings to investigate the facts, and upon refusal of the Hospital to cooperate

with discovery, issued two subpoenas:

- a) - Subpoena to submit " The transcripts of proceedings before Mercy Hospital Peer Review Committee."

and,

- b) - Subpoena to submit " All records of the Eastern Michigan Regional Board of the Sisters of Mercy Health Corporation, pertaining to the denial of the reappointment of Carmela M. Stella, MD, to the Medical Staff of Mercy Hospital, Port Huron."

The Hospital has refused to honour both subpoenas. ( Summary Investigation Report by William F. La Rue, Chief investigator of Medical Science Unit, dated 11-30-78 ).

At the end of a year and a half of a dispute with Aubrey Mulling and William

La Rue of the Michigan State's Medical Investigation unit, the Hospital's Attorney bypassed such investigation unit and entered into private negotiations with two assistant attorney general : Gay Hardy and Max Hoffman.

Through such negotiations the hospital's attorney were successful in concealing the documents requested by subpoena, and in obtaining the issue of a third subpoena requesting <sup>only</sup> a "certified copy" of any and all patients records.

" Knowing concealment of evidence in a Court proceeding, is a fraud and a felony."

None of the patients' records forwarded to the Court, were "certified" as requested. ( Investigation report, William La Rue, dated 11-30-78. Michigan's Attorney General files. )

Dr. John Fennessey, MD., - Member of the Michigan Board of Medicine, review-

ed such records and testified that the allegations of malpractice made by the hospital were not documented on the hospital's charts.

At the request of Max Hoffman, assistant attorney general cooperating with the hospital's attorneys, the Administrative Court dismissed the complaint without prejudice.

CCP 581 prohibits dismissal of a complaint without prejudice after the evidence has been submitted, - therefore such request by an assistant attorney general and the order of the administrative court, were both in violation of statute.

"When affirmative relief is sought, voluntary dismissal is barred unless same is consented to in writing by the party seeking the affirmative relief." CCP 581. Such consent was refused by Dr. Stella.

The Administrative Court has refused

to submit "evidence and witnesses" requested under a Freedom of Information and Privacy Act Request. ( July 27, 1982.)

Such refusal violates the Sixth Amendment of the Constitution.

The Court of Appeals has failed to enforce discovery : Failure to enforce discovery of fundamental evidence, violates due process .

The Court of Appeals has disregarded

- 1) - Perjury in front of a Peer Review Committee.
- 2) - False allegations of malpractice in front of the administrative court.
- 3) - Curtailment of staff privileges on the base of false allegations, fact which caused Dr. Stella the total loss of her business and reputation, and
- 4) - Knowing concealment of evidence in the course of the

Administrative Court proceedings; - ruling "perjury", "false allegations", and "fraud", to be evidence frivolous and without merit.

It has allowed the Defendants to modify their defense, from the defense presented in administrative court, allowing them to claim in Federal Court "irreconcilable differences of opinions" as reason for curtailment of staff privileges.

Substantive due process, requires that rules or reasons be not arbitrary, or arbitrarily changed: - Nothing in the actions and defense of the hospital satisfies substantive due process.

The Hospital has concealed the evidence; arbitrarily changed its defense and its reasons in two different Courts; and in the absence of evidence expects the Court to accept its claim as "legitimate".

The District Court and the Court of Appeals have dismissed the case against Mercy Hospital and all the named Appellees on the base of two rulings of the Courts: The Robinson v. McGovern ruling ( 521 F. Supp. 842 (W.D.Pa 1981) affd 3rd Cìrcuit Slip Opinion # 81-2726, 5-11-82 ) and the Parker v. Brown ruling 317 US 341 (1943).

Neither of those two rulings is applicable to the present case: - Dr. Robinson was granted privileges by seven hospitals in the area, and refused privileges by one.

Dr. Stella was refused privileges by all four hospitals in the area, acting in concert.

The Parker v. Brown doctrine is inapplicable to Dr. Stella's case since the actions of the four hospitals preceded any state action. The Parker v. Brown doctrine is limited to action taken by the State to effectuate what otherwise

would be illegal conduct, and it can be applied only when the state action is the modus operandi. (Cantor v. Detroit Edison Co. 428 US 579 (1976)).

It remains for this Court to decide if a "difference of opinion" (accepting the claim of the Hospital on its face, without support of evidence) - if a "difference of opinion" is a legal base for depriving a person of property rights.

In this Supreme Court sit Justices who at one time or another, have dissented from the majority and recorded their dissent in writing.

I doubt the Justices in the majority consider their right to unseat from the Court their colleagues, - because they have exercised their privilege and right to dissent.

A difference of opinion in the medical management of a case, is no different than a difference of opinion in the legal management of a case.

It was five centuries ago that the distinguished physicist and astronomer Galileo, was imprisoned in Rome under threat of excommunication by the Inquisition, for "irreconciliable differences of opinion" : He claimed the earth was round and gravitated around the Sun, at a time when everybody thought the earth to be flat and fixed at the center of the universe.

There are no "dogmas" in Science, and all of us, scientists and lawyers alike, have believed that "obscurantism", "ignorance" and "prejudice" are sins of the past that should not be allowed to return.

#### ARGUMENT OF LEGAL ISSUES

A. The right of a physician to practice a profession is a "property right" and such defined by the Courts.

The fifth amendment of the Constitution requires that no person be deprived of his property, without due process.

There has been "no vestige" of due process in the proceedings involving this action.

The Hospital has violated every standard set forth by the Joint Commission for the accreditation of Hospitals, concerning due process in the appointment and reappointment of Medical Staff.

Compliance with such standards is a condition for the disbursement of Federal funds ( Medicare, Medicaid) under the 1972 Federal Act.

B. Both District and Appeal Court have dismissed our complaint against three of the Hospitals sought to be joined as Defendants, on the base of a statute of limitation attached to the Sherman Act (15 USC section 15b).

28 USC section 2415 (c) clearly states that "actions to establish right of possession of property have no bar".

" Nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of property."

To which , section 1983 of the Civil Right Act (42 USC section 1983) adds :

" Every person who, under colour of any statute subject or cause to be subjected any citizen of the United States to the deprivation of any right secured by the Constitution, shall be liable to the party injured in an action at law or any other proceedings, for redress.

Both District Court and Court of Appeal have enforced a statute which is "unconstitutional".

A statute which limits the protection of a constitutional right is "de facto" unconstitutional.

C. By a 1974 amendment of the Sherman Act, Congress has declared a violation of the Sherman Act to be a "felony", - which by definition is an offense against the State.

Statutes of limitation cannot be properly applied to the prosecution of a "felony".

D. Both District and Appeal Court have failed to enforce discovery fundamental to the decision of this case: Such, is a violation of "due process"; it is also evidence of bias. "Knowing concealment of evidence in the course of Court proceedings is a "fraud" and a "felony".

Aiding and abetting the commission of a "felony", - is judicial misconduct.

E. Dismissal of a case on its merits

without allowing the Jury to review the evidence, - violates the seventh amendment of the Constitution, which protects the "inviolable" right to Jury trial.

Two elements are fundamental in an antitrust action :

1. Damage to the public,  
and,
  2. Conspiracy to restrain trade.
- The Appellees in this case, - have been guilty of both.

A group boycott is a "per se" violation of the Sherman Act.

This Court has ruled that " .. a group boycott is not to be tolerated merely because the victim is so small that his destruction will make little difference to the economy." Klor's v. Broadway-Hales Stores, 359 US 207.

It has also ruled that : -  
"..neither nature of occupation, nor  
any alleged public service provides

sanctuary from the Sherman Act." United  
Staes v. National Society of Professional  
Engineers 435 US 679 (1976) 98 S.Ct. 1355

When a blue collar man commits a  
crime and steals someone else's property,  
the Court promptly and harshly punishes  
him.

The identical crime ( destroying  
another person's property ) has been com-  
mitted in this case by white collar men.  
It seems the Courts have gone to great  
lenghts to protect the criminals from  
the punishment of the Law. And, - as the  
Romans said, "Dura Lex, - sed Lex."  
Which in plain english translates :  
" The Law should be equal into all."

The property right for which I am  
asking protection, - is my right to make  
a living : The right to practice my  
profession.

Such a right, the right to work,

is more fundamental to a citizen than the right to free speech.

It is infinitely more important, - because it more closely relate to the most basic of all human rights : The right to life.

When you have deprived a man of his means of subsistence , you have jeopardized the man's right to life.

### CONCLUSION

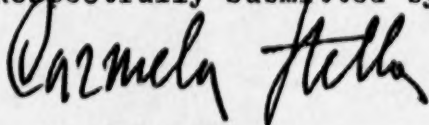
We believe, that contradictions of applicable statutes in this case, and the question of constitutionality of one such statute, - deserve review by this Court.

We also believe that "concealment of evidence" by the State of Michigan's Attorney General, as well as "refusal to submit evidence and witnesses" by the Michigan Department of Licensing,

- in addition to other numerous violation  
of due process by the lower Courts, -  
warrants review of this case on its merits.

On the base of the evidence submitted,  
we believe reversal of the judgement of  
the lower Court is a matter of Justice.

Respectfully submitted by:



---

Carmela M. Stella, M.D.  
In Propria Persona

Dated: January 17, 1983.

Note: - All evidence submitted to this  
Court was released by the Michigan  
Attorney General, under a Freedom  
of Information and Privacy Act  
request, after being confronted  
with the 1981 Code of Federal  
Regulations concerning discovery  
of evidence. Such evidence was  
submitted to the Court of Appeals  
on September 27, 1982.

Federal Trade Commission Act, 38 Stat. 719

Section 5, as amended, 15 USCS section 45 (b).

"..The Sherman Act should be contrasted with section 5 of the Federal Trade Commission Act which requires that the Commission find that the proceeding by it.. would be to the interest of the public before it issues a complaint for unfair competition."  
(Klor v. Broadway-Hale Stores, 359 U.S. 207)

---

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

CARMELA M. STELLA, M.D.

Plaintiff-Appellant

vs.

MERCY HOSPITAL, PORT HURON,  
MICHIGAN, a Corporation Assumed  
Name for the Sisters of MERCY  
HEALTH CORPORATION, a Michigan  
nonprofit corporation, RONALD  
BALBOA, M.D., JOHN H. MILLER,  
M.D., JOHN C. SULLIVAN, M.D.,  
JOSEPH A. BARRS, M.D., JAMES  
G. WOLTER, M.D., JAMES W. COPPINGS,  
M.D., JAMES J. SNIDER, M.D.  
JOHN A. YOUNGS, M.D., GORDON  
H. WEBB, M.D., SISTER MADELINE  
SAGE, MICHAEL SCHWARTZ, SISTER  
MARIAN MERTZ, SISTER MARY PATRICE  
SINNOT, jointly and severally,

Defendants-Appellees

ORDER

Filed: October 25, 1982

---

Before: KRUPANSKY and WELLFORD, Circuit  
Judges; and BROWN, Senior Circuit Judge.

---

This pro se plaintiff, a medical doctor who maintained a general practice in the State of Michigan, appeals from a judgement granting summary judgement to the defendants and dismissing plaintiff's action. Plaintiff alleged that the defendants conspired to restrain trade and conspired to monopolize the practice of medicine in violation of section 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. section 1 and 2.

The allegations were based upon the termination of plaintiff's medical staff privileges at Mercy Hospital in Port Huron, Michigan. After providing the plaintiff with many opportunity to develop her case through discovery, the district court finally concluded that there existed "overwhelming documentation" to support the plaintiff's suspension based solely on "irreconcilable differences of opinion on what constitutes appropriate or even

standard medical treatment." Although this action was brought in 1980 against Mercy Hospital and its Executive Committee for not renewing plaintiff's staff privileges in 1976, the plaintiff sought to join three other hospitals which had also denied her staff privileges in 1971, 1972 and 1974. The district court denied the motion for joinder as the claims against these hospitals were barred by the Antitrust Act's four years statute of limitations contained in 15 U.S.C. section 15(b).

After carefully reviewing the district court record and the appellate briefs submitted in this cause, this Court concludes that the plaintiff utterly failed to proffer sufficient facts to show that the defendants wilfully conspired to unreasonably restraint competition in violation of 15 U.S.C. section 1, see Davis-Watkins Co. v. Service Mdse., -- F.2d \_\_\_. slip op.

81-5057 (6th Cir. August 23, 1982);  
Barnowsky Oil, Inc. v. Union Oil Co.  
v. Cal., 665 F ed 74 (6th Cir. 1980)  
and Fray Chevrolet Sales, Inc. v. General  
Motors Corp. , 536 F.2d 683, 686 (6th  
Cir.1976). or that the defendants conspired  
with predatory intentand without legiti-  
mate business reasons to maintain a  
monopoly in violation of 15 U.S.C. section  
2. Byars v. Bluff City News Co.,Inc.,  
\_\_\_ F2d \_\_\_, slip op. 80-5425-26 (6th Cir.  
July 14, 1982). This Court has considered  
and now rejects the myriad claims raised  
in the plaintiff 's rambling appellate  
brief for reasons which are well summari-  
zed by the district court in its opinion  
awarding summary judgement to the defendants.  
It is clearly apparent that the plaintiff's  
case is simply and totally devoid of  
merit. Any inference which may liberal-  
ly be inferred to aid this pro se plaintiff  
is soundly rebutted by all facts contained  
in this case which show that the defen

dants ' conduct was motivated by understandable and legitimate business and medical reasons. James R. Snyder Co. v. Associated Gen. Constr., E.T.C., 677 F.2d 1111, 1123-24 (6th Cir. 1982); Blair Foods, Inc. v. Ranchers Cotton Oil, 610 F. 2d 665, 672 (9th Cir. 1980). Plaintiff's claims of sexual discrimination and due process violations are also bald allegations made without any supportable facts. Finally, the district court properly decided not to join the other hospitals who refused to grant or renew plaintiff's staff privileges as her claims against them were barred by the Antitrust Act's four years statute of limitations provided in 15 U.S.C. section 15b; and, although the plaintiff may still have felt the effects of the refusals during the limitations period, "unabated inertial consequences" do not

constitute continuous antitrust violations so as to warrant the joinder of the hospitals in this action. *Barnowsky Oils, Inc. v. Union Oil Co. v. Cal.* , 665 F 2d at 81-82.

This Court has , furthermore, reviewed the plaintiff's "answer to motion to strike" construed as her renewed motion to join additional parties, and the panel has also reviewed plaintiff's motion to enforce disclosure under the Freedom of Information Act. While not reaching a decision on these additional issues which present serious questions by way of possible further impediment to the plaintiff's stating any antitrust cause of action, the court notes there may be a "state action" exemption available to defendants under the doctrine of *Parker v. Brown*, 317 U.S. 341 (1943); see also *Gambrel , et al v. Ky. Bd. of Dentistry, et al*, \_\_\_ F.2d\_\_\_, (6th Cir.

Slip Opinion #80-3336, 9-24-82), and because withdrawal of medical privileges under the circumstances as a matter of law may not constitute a violation of antitrust laws. See Santos v. Columbus-Cuneo-Cabrini Med. Center, \_\_\_\_ F.2d \_\_, Slip Opinion #81-2628 (7th Cir. 8-10-82); Robinson v. McGovern, 521 F. Supp.842 (W.D.Pa. 1981) affd. (3rd Cir., Slip Opinion #81-2726, 5-11-82).

Having carefully considered the matters raised therein, the Court concludes that the motions should be and are hereby denied for being frivolous and without merit. The Court has already denied plaintiff's request to join additional parties; and, plaintiff's request for disclosure of documents is not properly reviewable in the first instance in this particular appeal.

Furthermore, it appears that the

plaintiff's request for enforcement of disclosure under the Act is now moot.

This panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34 (a), Federal Rules of Appellate Procedure. The district court's judgement is hereby affirmed pursuant to Rule 9 (d) (3), Rules of the Sixth Circuit, because the questions on which the cause depends are so unsubstantial as not to need further argument.

ENTERED BY ORDER OF THE COURT

John P. Hehman

---

Clerk

Mandate issued: November 29, 1982

Costs: None

A TRUE COPY

Attest: John P. Hehman

by Lynda L Brinson

Deputy Clerk

No. 82-1274

---

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

CARMELA M. STELLA, M.D.

Plaintiff-Appellant

v.

MERCY HOSPITAL, ET AL.,

Defendants-Appellees

ORDER

---

Filed : November 24, 1982

BEFORE : KRUPANSKY and WELLFORD, Circuit  
Judges; BROWN, Senior Circuit  
Judge.

Upon consideration of the petition  
for rehearing filed herein by the plaintiff-  
appellant, the court concludes that all  
the questions addressed in the petition  
for rehearing were fully considered upon  
the original submission and decision of

this case.

It is therefore ORDERED that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman

Clerk

---

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

CARMELA M. STELLA, M.D.  
Plaintiff,

v.

MERCY HOSPITAL, PORT HURON  
MICHIGAN, a Corporation Assumed  
Name for the Sisters of MERCY  
HEALTH CORPORATION, a Michigan  
nonprofit corporation, RONALD  
BALBOA, M.D., JOHN H. MILLER,  
M.D., JOHN C. SULLIVAN, M.D.,  
JOSEPH A. BARRS, M.D., JAMES,  
G. WOLTER, M.D., JAMES W. COPPINGS,  
M.D., JAMES J. SNIDER, M.D.,  
JOHN A. YOUNGS, M.D., GORDON H.  
WEBB, M.D., SISTER MADELINE  
SAGE, MICHAEL SCHWARTZ, SISTER  
MARIAN MERTZ, SISTER MARY PATRICE  
SINNOT, jointly and severally

Defendants

---

MEMORANDUM OPINION AND ORDER

At a session of said Court held  
in the Federal Building, Bay City,  
Michigan, on the 5th of April, 1982.

PRESENT: HONORABLE JAMES HARVEY  
United States District Judge

The above entitled matter was filed  
on January 23, 1980.

On January 21, 1981, this Court issued  
an order allowing plaintiff's counsel  
to withdraw. Plaintiff filed a notice  
of intent to proceed without an attorney  
on February 23, 1981, and plaintiff has  
proceeded without same since that date.  
The matter is in front of this Court on  
fifteen separate motions.

Plaintiff's motions are as follows:

	<u>Type</u>	Pleading No.
1.	Motion and declaration re: Joinder	35
2.	Notice of contempt of subpoena to St. Joseph's Hospital	51
3.	Notice of contempt of subpoena to Port Huron Hospital	52
4.	Notice of contempt of subpoena re: River District Hospital	53

<u>Type</u>	<u>Pleading No.</u>
5. Motion for sanctions or to compel discovery	72
6. Appendix to Motion re: Joinder:	73
7. Objection to dropping of Party Stuart Lockman from list of Defendants.	76

(The name or characterizarion of the motion is reproduced exactly as stylized by the plaintiff.)

Defendants motions are as follows:

1. Motion for sanctions or to compel discovery	29
2. Motion for summary judgment	30
3. St. Joseph's Hospital motion to quash subpoena	44
4. River District Community Authority's objections to production of documents	45
5. Port Huron Hospital 's objections to inspection and copying of designated documents and materials	47
6. Motion for sanctions or to compel discovery	68

Type

## Pleading No.

- |   |    |
|---|----|
| 7. Mercy Hospital's objections to subpoena to produce documents | 70 |
| 8. Supplemental Motion for Summary Judgement                    | 74 |

( All motions filed by a Party other than the plaintiff are listed under "Defendants's Motions" because these particular parties share common counsel.)

The Court will note at the outset that because of its obligations to liberally construe the pleadings of a pro se litigant and of the mandate of Fr. Civ. \_ 8 (f) that "all pleadings shall be construed as to do substantial justice", plaintiff has been afforded considerable leeway in the conduct of this matter. See, Echols v. Voisine, 506 F.Supp. 15, 16 (ED Mich. 1981) . This Court will also note that it has carefully read and attempted to comprehend all the Plaintiff's pleadings, included but

not limited to (1) "plaintiff's proof of conspiracy to restrain trade"(Pleading 54) (2)"Plaintiff's proof of damage" (Pleading 55); (3) " Plaintiff's concluding argument" (Pleading 56) ; (4) "Plaintiff's Merits of the case" (Pleading 57) ; (5) Plaintiff's Legal implications of deposition of Kathryn MsMorrow, Lila Hopper and Dorothy Candela. (Pleading 58); (6), Plaintiff's Exhibits vi-9, vi-6 and W1-2 (Pleading 59); (7) Plaintiff's Exhibits X-Y-Z"(Pleading 64); and (8) "Plaintiff's Appendix to Brief on Merits of Case. (Pleading 65). Suffice it to say that this Court is thouroughly versed with everything Plaintiff has filed; whether it was done so properly or improperly. Accordingly the Court rules as follows;

Plaintiff alleges that the defendants conspited to restrain trade and conspired

to monopolized the practice of medicine in violation of Sections 1 and 2 of the Sherman Act, 15 USC 61 and 62.

These allegations are based upon the termination of her staff privileges at Mercy Hospital in Port Huron, Michigan. It should be noted that during the termination proceedings, Plaintiff had at all times a competent attorney that Plaintiff was afforded a full and fair opportunity to explain her position with respect to the charges of "inadequate medical care" . Consequently, there is only one claim before this Court and that is the antitrust allegations. ( While plaintiff attempts to inject a host of other claims by inference or innuendo, the Court rejects them as having no basis in law or fact. Furthermore, even assuming such a basis exist,

the allegations fail to comply with FRs Civ. P 8 (a) (2), 12 (b) (6). )

With these basic facts, the Court turns to plaintiff's most critical motion and that is her "motion and declaration re:Joinder". In this motion plaintiff seeks to join as defendants St. Joseph's Hospital in Mt. Clemens, Michigan and River District Hospital and Port Huron Hospital, both of Port Huron, Michigan. It is clear , however, that even assuming plaintiff's claim against these hospitals were legally sufficient on their face that said claims are barred by the four years statute of limitations. 15 USC 615b; Barnowsky Oils Inc. v. Union Oil Co. of California, 665 F2d 74, 81 (CA 6, 1981). St. Joseph's Hospital denied plaintiff staff privileges in 1972. River District Hospital denied plaintiff privileges in 1972. Port Huron Hospital denied plaintiff staff privileges in 1974.

This action was filed in 1980; making all claims prior to 1976 without legal force. Marlowe v Fisher Body, 489 F2d 1057 (CA 6, 1973) ; United States v. Western Casualty and Surety Co. , 359 F2d 521 (CA 6, 1966). Accordingly, plaintiff's motion is DENIED.

Logically the Court must turn to defendants motion for summary judgement. They are:

1. Stella has failed to allege, let alone present, any facts which might establish the existence of an "antitrust conspiracy" , that is, a conspiracy intended to harm competition; and
2. Assuming that Stella could present evidence supporting a finding of a conspiracy motivated by anticompetitive intent, she has failed to raise a genuine issue of fact as to whether the alleged conspiracy had a sufficient effect on competition to constitute a violation of either Section 1 or 2 of the Sherman Act.

The Court agrees with defendants on both grounds. Plaintiff admits and there is overwhelming documentation in the file

herein to support the thesis that the plaintiff's suspension of staff privileges was based solely on irreconcilable differences of opinion on what constitute appropriate or even standard medical treatment. The Committee which decided to suspend plaintiff's staff privileges and the Regional Board which affirmed that determination after a full hearing based their decision on (1) mistakes in diagnosis, (2) inappropriate medical treatment, (3) interference with post-operative management of surgical patients, (4) repeated disregard of specialists recommendations.

Under no circumstances can these considerations of utmost medical importance be construed to form the basis or nucleus for an "antitrust conspiracy". Smith v. Northern Michigan Hospitals Inc, 518 F. Supp 644 (WD Mich. 1981); Robinson v.

McGovern , 551 F Supp 842 (WD Pa, 1981).

Additionally, plaintiff has failed to show in any pleading that the suspension of her staff privileges at Mercy Hospital prejudiced the public interest by substantially or significantly affecting commerce, Apex Hosiery Co v. Leader, 310 US 469 (1940); Ace Beer Distributors Inc v. Kohn, 318 F2d 283 (CA 6, 1963) ; or more specifically the practice of medicine in Port Huron or southeast Michigan. Harron v. United Hospital Center Inc., 522 F2d 1153 (CA 4, 1975), cert denied 424 US 916 (1976). Irrespective of the voluminous pleadings filed by plaintiff, she has failed to show a genuine issue of fact as to whether the alleged conspiracy had any effect on competition in derogation of the Sherman Act. Lamb Enterprises Inc. v Toledo Blade Co. 461 F2d 506 (CA 6, 1972); cert denied, 490 US 1001 (1972);

Parmalee Transportation Co. v. Keeshin

186 F Supp 533 (ND Ill, 1960).

Accordingly, plaintiff's motion to join certain defendants is DENIED. Defendants motion for summary judgement is GRANTED. All other motions are MOOT. Case dismissed.

IT IS ORDERED.

James Harvey

United States District Judge

A TRUE COPY

Clerk, U.S. District Court  
Eastern District of Michigan

By Pauletta Hembling  
Deputy Clerk



WILLIAM G. MILLIKEN, Governor

## DEPARTMENT OF LICENSING AND REGULATION

SILVERMAN G. KANOVTON, Director

P.O. Box 30218

Lansing, Michigan 48209

Telephone: (517) 373-1870

July 27, 1982

Carmela Stella, M.D.  
2586 Aberdeen Avenue  
Los Angeles, California 90027

Re: Freedom of Information Act Request

Dear Dr. Stella:

Pursuant to your Freedom of Information request and our telephone conversation of July 20, 1982, please find enclosed a certified copy of your hearings file. The documents in this packet reflect all legal documents filed in your matter.

Investigation reports compiled by this agency are not subject to disclosure pursuant to Section 13(1)(b)(i) of the Act which is quoted as follows:

"A public body may exempt from disclosure as a public record under this act:

\* \* \* \*

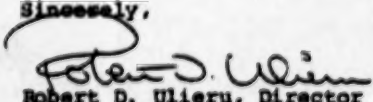
"(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

"(i) Interfere with law enforcement proceedings."

Because the complaint previously filed against you was dismissed without prejudice, I will not disclose the identity of witnesses and/or evidence in this matter.

If you have any further questions, please feel free to contact me.

Sincerely,

  
Robert D. Uliaru, Director  
Office of Complaint Analysis  
Bureau of Health Services  
Phone: (517) 373-9196

RDU:pb

enclosures

IN THE  
SUPREME COURT OF THE UNITED STATES

No. \_\_\_\_\_

---

CARMELA M. STELLA, M.D.

Appellant

v.

MERCY HOSPITAL , PORT HURON

ET AL.,

Appellees

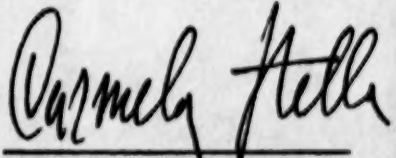
---

AFFIDAVIT OF CARMELA STELLA

I, - CARMELA STELLA, - declare under penalty of perjury, - that :

1. - I am attorney in propria persona in the above captioned matter.

2. - I have written and read the attached Appeal brief, and the statements contained within are true to the best of my knowledge and belief.



---

CARMELA STELLA, M.D.  
In Propria Persona  
2586 Aberdeen Avenue  
Los Angeles, Ca. 90027

Dated: January 18, 1983

IN THE  
SUPREME COURT OF THE UNITED STATES

No. \_\_\_\_\_

---

CARMELA M. STELLA, M.D.

Appellant

v.

MERCY HOSPITAL, PORT HURON

ET AL.,

Appellees

---

PROOF OF SERVICE

I, CARMELA STELLA, - declare under penalty of perjury, - that :

1. - On January 20, 1983, I served  
three copies of Appeal Brief upon:

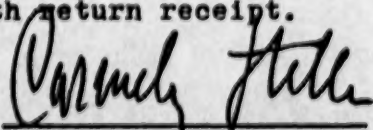
David Ettinger, Esq.

Honigman Miller Schwartz & Cohn  
2290 First National Bldg.

Detroit, Michigan 48226

by placing such documents in an envelope  
addressed as above and forwarding them by  
registered mail with return receipt.

Dated: January 20, 1983



CARMELA STELLA, M.D.  
In Propria Persona

2586 Aberdeen Avenue  
Los Angeles, Ca 90027